

FILED

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

MAY 19 2005



LAVONNE JEAN LEAF

Petitioner,

-vs-

UNITED STATES OF AMERICA,

Respondent.

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CIV 05-1004

ORDER AND OPINION

Petitioner pleaded guilty to involuntary manslaughter and, on December 21, 2001, was sentenced to 94 months imprisonment. She appealed and, on October 21, 2002, the United States Court of Appeals for the Eighth Circuit affirmed. On February 7, 2005, petitioner filed a "Petition to Review Case" in her criminal matter based upon the recent decisions of the United States Supreme Court in Blakely v. Washington, 124 S.Ct. 2531 (2004), and United States v. Booker, 125 S.Ct. 738 (2005). The relief requested is in the nature of a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 and the petitioner has consented to have the petition reclassified as a § 2255 motion.

Petitioner's motion was filed beyond the one year period of limitations set forth in 28 U.S.C. § 2255. Petitioner contends that she is entitled to relief under the United States Supreme Court's decisions in Blakely v. Washington and United States v. Booker. Petitioner's motion was filed within a year of the Supreme Court's decisions in Blakely and Booker. 28 U.S.C. § 2255 provides, in part, that the "limitation period shall run from the latest of . . . (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." Blakely, and Booker have not been found to be retroactive on collateral review. United States v. Fraser, ___ F.3d ___, 2005 WL 1090138 (1st Cir. 2005), Green v. United States, 397 F.3d 101, 103 (2nd Cir. 2005), In re Olopade, 403 F.3d 159 162-63 (3rd Cir. 2005), In re

Elwood, --- F.3d ----, 2005 WL 976998 (5th Cir. 2005), Humphress v. United States, 398 F.3d 855, 862-63 (6th Cir. 2005), McReynolds v. United States, 397 F.3d 479, 480-81 (7th Cir. 2005), and Varela v. United States, 400 F.3d 864, 868 (11th Cir. 2005).

It plainly appears from the face of the motion that the petitioner is not entitled to relief. Summary dismissal is therefore appropriate pursuant to Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Courts.

Now, therefore,

IT IS ORDERED that petitioner's motion to vacate, set aside, or correct sentence is denied.

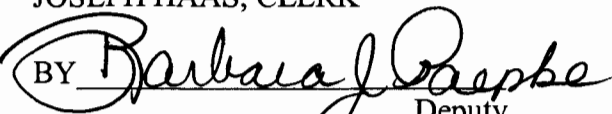
Dated this 19th day of May, 2005.

BY THE COURT:



CHARLES B. KORNMAN
United States District Judge

ATTEST
JOSEPH HAAS, CLERK

BY 
Deputy
(SEAL)